

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MICHAEL MCCARTHY, et al.,

Plaintiffs,

v.

CHARLES D. BAKER, in his Official Capacity as Governor of the Commonwealth of Massachusetts, et al.,

Defendants.

CIVIL ACTION
NO. 1:20-cv-10701-DPW
(Leave to file granted on May 26, 2020)

CEDRONE, LLC d/b/a SHAWSHEEN FIREARMS, et al.,

Plaintiffs,

v.

CHARLES DUANE BAKER, in his capacity as GOVERNOR OF THE COMMONWEALTH OF MASSACHUSETTS, et al.,

Defendants.

CIVIL ACTION
NO. 1:20-cv-40041-DPW
(Leave to file granted on May 26, 2020)

DEFENDANTS' COMBINED MOTION TO DISMISS

Defendants Charles D. Baker, Governor of the Commonwealth of Massachusetts; Monica Bharel, Commissioner of the Department of Public Health; Jamison Gagnon, Commissioner of the Department of Criminal Justice Information Services; and Maura Healey, Attorney General of the Commonwealth of Massachusetts, move to dismiss the Second Amended Complaint filed in *McCarthy v. Baker*, No. 1:20-cv-10701-DPW, and the Complaint filed in *Cedrone, LLC v. Baker*, No. 1:20-cv-40041-DPW, in their entirety pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

The complaints in these consolidated cases assert as-applied challenges to three temporary orders issued by Governor Baker to prevent the spread of COVID-19, the disease caused by the novel coronavirus that has infected nearly 100,000 Massachusetts residents, killed more than 6,500 Massachusetts residents, and caused a global pandemic. The three orders—COVID-19 Order Nos. 13, 21, and 30—temporarily prohibited non-essential businesses and organizations, including gun retailers and shooting ranges, from opening to the public during the most acute phase of the crisis in Massachusetts. All three orders have now expired on their own terms, and under the current order now in effect, COVID-19 Order No. 33, gun retailers and shooting ranges may be open to the public in Massachusetts, so long as they comply with generally applicable social distancing and related safety measures. There is, accordingly, no longer a live dispute between the parties in these consolidated cases, and all of the plaintiffs' claims should be dismissed as moot under Fed. R. Civ. P. 12(b)(1).

In addition, the state-law claim asserted by the *Cedrone* plaintiffs, which alleges a violation of Article XVII of the Massachusetts Declaration of Rights, must be dismissed under Fed. R. Civ. P. 12(b)(1) and 12(b)(6) because it is barred by the Eleventh Amendment to the United States Constitution and fails to state a claim upon which relief can be granted. The claims for compensatory and punitive damages asserted by the *Cedrone* plaintiffs against the Governor and Attorney General in their official capacities must also be dismissed as barred by the Eleventh Amendment.

Both complaints assert claims seeking damages against the Defendants in their individual capacities. Those claims must all be dismissed under Fed. R. Civ. P. 12(b)(1) and 12(b)(6) because they are barred by the doctrine of qualified immunity.

Finally, the procedural due process claims asserted in the *Cedrone* complaint against the Governor and Attorney General must be dismissed under Fed. R. Civ. P. 12(b)(6) because they fail to state a claim on which relief may be granted.

In support of this motion, the Defendants rely upon their Combined Memorandum of Law, filed contemporaneously with this motion.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), the Defendants request a hearing on this motion, on the ground that oral argument is likely to be of assistance to the Court.

Respectfully submitted,

CHARLES BAKER, Governor of the Commonwealth of Massachusetts; MONICA BHAREL, Commissioner of the Department of Public Health; JAMISON GAGNON, Commissioner of the Department of Criminal Justice Information Services; and MAURA HEALEY, Attorney General of the Commonwealth of Massachusetts,

By their attorney,

MAURA HEALEY
ATTORNEY GENERAL

/s/ Julia E. Kobick

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Dated: May 28, 2020

CERTIFICATE OF SERVICE

I certify that, on May 28, 2020, this document, filed through the Court's ECF system, will be sent electronically to registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

/s/ Julia E. Kobick _____

Julia E. Kobick

Assistant Attorney General

CERTIFICATE PURSUANT TO LOCAL RULE 7.1(a)(2)

I certify that, on May 22 and 27, 2020, I conferred with counsel for the plaintiffs and attempted in good faith to reach agreement on this motion this motion but was not able to do so.

/s/ Julia Kobick _____

Julia Kobick

Assistant Attorney General